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August 19, 1996

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JOHN D. POUTASSE\*

\*ADMITTED MD ONLY

**VIA HAND DELIVERY**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

Re: L.M. Communications II  
of South Carolina  
WNST(FM), Moncks Corner, SC  
MM Docket No. 94-70  
RM-8474, RM-8706

Dear Mr. Caton:

On behalf of L.M. Communications II of South Carolina, Inc., licensee of FM radio broadcast station WNST, Moncks Corner, South Carolina, I am transmitting herewith an original and four copies of a Petition for Reconsideration of the Allocation Branch's Report and Order (DA 96-1149) which denied, inter alia, the petition for rule making filed by its predecessor, Cedar Carolina Limited Partnership, proposing substitution of Channel 288C2 for Channel 287C3, the reallocation of Channel 288C2 from Moncks Corner to Kiawah Island, South Carolina and the modification of WNST's license accordingly.

Should there be any questions concerning this matter please contact the undersigned.

Very truly yours,



Sally A. Buckman

No. of Copies rec'd 013  
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**Enclosures**

cc (w/encls.): Mr. John Karousos (By hand delivery)  
Ms. Sharon P. McDonald (By hand delivery)

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

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AUG 19 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Amendment of Section 73.202(b) )

Table of Allotments, )

FM Broadcast Stations )

(Moncks Corner, Kiawah Island, and )

Sampit, South Carolina) )

MM Docket No. 94-70

RM-8474

RM-8706

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**PETITION FOR RECONSIDERATION**

L.M. Communications II of South Carolina, Inc. ("LMC"), licensee of Station WNST(FM) (formerly WJYQ(FM)), Moncks Corner, South Carolina, by its attorneys and pursuant to Section 1.106 of the Commission's Rules, hereby requests reconsideration of the Allocation Branch's July 19, 1996 Report and Order (DA 96-1149) (the "Report and Order"), which denied, inter alia, the petition for rule making filed by LMC's predecessor, Cedar Carolina Limited Partnership, proposing substitution of Channel 288C2 for Channel 287C3, the reallocation of Channel 288C2 from Moncks Corner to Kiawah Island, South Carolina and the modification of Station WNST(FM)'s license accordingly.<sup>1</sup> In support whereof, the following is shown.

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<sup>1</sup> As noted in the Report and Order, when Cedar Carolina Limited Partnership ("Cedar Carolina") originally filed the petition for rule making at issue in this proceeding, it was the permittee of Station WJYQ(FM), Channel 287C3, Moncks Corner, SC. On July 26, 1994, the Commission consented to the involuntary assignment of WJYQ's license (BLH-861218KB) and  
(continued...)

**I. Background**

At the request of WNST, the Commission issued a Notice of Proposed Rule making (the "Notice") proposing the substitution of Channel 288C2 for Channel 287C3, the reallocation of Channel 288C2 from Moncks Corner to Kiawah Island, South Carolina, as that community's first local transmission service, and the modification of Station WNST's license accordingly. In response to the Notice, Sampit Broadcasting ("SB") filed comments and a counterproposal (the "Counterproposal") which proposed a series of interdependent changes to the FM Table of Allotments: the allocation of Channel 288A to Kiawah Island, the substitution of Channel 287A instead of Channel 287C3 at Moncks Corner, and the allocation of Channel 289A to Sampit, South Carolina. In response to the Commission's October 11, 1995 Public Notice announcing the Counterproposal, Brandon, LMC and SB filed reply comments and Brandon also filed a "Motion for Summary Dismissal." On July 17, 1996, the Allocations Branch issued the Report and Order which (1) denied WNST's petition for rulemaking (RM-8474) based on a finding that there was no suitable or available site for upgrading Channel 287C3 to Channel 288C2 and reallocating the channel to Kiawah Island; (2) denied SB's Counterproposal (RM-8706) based on a finding that Sampit is not a "community" for allotment purposes; (3) dismissed the

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<sup>1</sup> (...continued)

construction permit (BPH-910219IC) to Orville Ronald Brandon ("Brandon" and collectively with LMC and Cedar Carolina, hereinafter referred to as "WNST"), court-appointed Receiver. This assignment was consummated on August 11, 1994. See FCC file No. BALH-940707GE. Subsequently, on March 30, 1995, the Commission consented to the assignment of the WJYQ construction permit and license from Brandon to LMC. This assignment was consummated on May 30, 1995. On November 10, 1995, the call sign of the station was changed from WJYQ(FM) to WNST(FM). A license (BLH-950822KC) was issued on April 26, 1996 for Channel 287C3 at Moncks Corner.

“Motion for Summary Dismissal” filed by Brandon as moot; and (4) terminated the proceeding. For the reasons set forth herein, LMC respectfully requests reconsideration of the decision to deny the petition for rulemaking (RM-8474) filed by WNST. LMC further respectfully requests that the Allocations Branch (1) substitute Channel 288C2 for Channel 287C3; (2) reallocate Channel 288C2 from Moncks Corner to Kiawah Island, South Carolina; and (3) modify Station WNST’s license accordingly.

**II. Commission Precedent Does Not Require WNST To Make A Detailed Showing Regarding Site Availability At The Allotment Stage Of An Upgrade Proceeding**

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In the Report and Order, the Allocations Branch acknowledged that it is “generally presum[ed] in rulemaking proceedings that a technically feasible site is available.” Report and Order at 7. Thus, the Commission does not require detailed showings regarding the availability or suitability of a particular site in rulemaking proceedings to allot FM channels, beyond the basic requirement that an adequate signal be placed over the community of license from an identifiable site which conforms to the spacing rules. See Key West, Florida, 3 FCC Rcd 6423 (Policy and Rules Division, 1988). However, the Branch noted that the presumption of site availability may be rebutted if sufficient evidence is presented, and in this circumstance the Branch will consider the reasonable likelihood that a suitable site will be available. Report and Order at 7. Based on its denial of the Kiawah Island channel substitution and upgrade, it appears that the Branch, relying solely on the conclusory and unsubstantiated allegations contained in the Counterproposal, concluded that the site-availability presumption had been rebutted and

therefore, that a determination regarding availability of a suitable site must be made. See Report and Order at 7, citing San Clemente, California, 3 FCC Rcd. 6728 (1988); Washington and Wilmington, North Carolina, 51 RR 2d 1297 (1982). However, in contrast to other allocation cases where it has reached a similar conclusion, in this case, the Branch provided WNST with no notice that the availability of a specific site would be considered at the allotment stage and no opportunity to supplement its response with further technical information regarding site availability. Further, the Allocations Branch failed to provide any information as to the specific facts on which it based its determination that there is not a suitable or available site for allotting Channel 288C2 to Kiawah Island.

Under existing Commission precedent, including cases cited in the Report and Order, detailed showings regarding the availability and suitability of a site are required only in the limited situation where a “sufficiently compelling showing” is made demonstrating that no site complying with the Commission’s minimum separation and other technical requirements exists. See Key West, Florida, 3 FCC Rcd 6423. For example, in Washington and Wilmington, North Carolina, the Commission's conclusion that no theoretical site existed for the allotment of Channel 10 to Wilmington, North Carolina was based on the “sufficient and compelling” showing made by five separate opponents of the proposal who provided specific engineering and environmental information regarding the lack of a suitable site, including evidence that the entire area in which a transmitter site could be located had been designated an “outstanding resource waters” by the North Carolina Environmental Management Commission, a “primary nursery area” by the North

Carolina Marine Fisheries Commission and “404 wetland” by the U.S. Environmental Protection agency. Washington and Wilmington, North Carolina, 51 RR 2d at 1297.

Further, unlike this case where WNST received no request from the Commission to provided further information regarding site suitability, in Washington and Wilmington, the Staff requested that the petitioner make a showing that a site located on the Atlantic Coast could be utilized while meeting the concerns of the environment and potential air hazard. The proposed allotment was denied only after the petitioner failed to comply with this request. Id. In Homerville, Lakeland and Statenville, Georgia, 8 FCC Rcd 2953, 2954 (Policy and Rules Division 1993), the Commission's staff initially denied the Lakeland channel allotment request because it concluded that “the proposed site [for Channel 248A] [was] in a swamp, and much of the area consist[ed] of wetlands. Therefore, site flexibility would [have been] limited.” On reconsideration, however, the Staff reversed its earlier conclusion finding that undue weight had been given to the statement of the allocation's opponents regarding the suitability of Lakeland's proposed site. Instead, the Staff concluded that where “there is a dispute as to whether the proposed site is located in an area of both wet and dry lands” an allotment of the proposed channel should have been made. Id. Similarly, in Randolph and Brandon, Vermont, 6 FCC Rcd 1760 (Allocations Branch 1991), a one-step upgrade proposal similar to the one proposed by WNST was approved, even though an opponent of the proposal claimed that the petitioner would not be able to obtain zoning approval for an FM tower within the fully spaced area, because the opponent had provided “no documentation from zoning officials to support this assertion.”

**III. Sampit Broadcasting Did Not Make a "Sufficiently Compelling Showing" Demonstrating That No Site Complying with the Commission's Minimum Separation and Other Technical Requirements Exists**

As the record in this case clearly demonstrates, SB failed even to attempt to make any showing -- much less a "compelling" one -- that there is no site available from which Station WNST can operate which complies with the Commission's signal coverage and separation rules. In its Counterproposal, SB asserted that Station WNST's proposed site is located in a tidal marsh and is in close proximity to the Charleston Executive Airport so that antenna towers would be "highly likely to be restricted to an unusable height." Counterproposal at 2. SB provided no evidence to support these assertions other than unsubstantiated allegations by its consulting engineer who simply concludes, without any specific evidence, that the proposed location "is not suited for a broadcast tower." Indeed, the engineer acknowledged that he "did not conduct an aeronautical study" of the area. Thus, SB's statement that there was no available site for Station WNST's proposed changes constitutes unsubstantiated speculation, not compelling evidence.

Even if the unsubstantiated allegations of SB "sufficiently raised" the question of whether a suitable site will be available, SB has not met its subsequent burden of showing that no site is available from which Station WNST can operate in compliance with the Commission's signal coverage and separation rules. In contrast, WNST had repeatedly provided technical information regarding the potential suitability and availability of a site in the proposed location. The technical exhibit included with WNST's original petition for rulemaking demonstrated that Station WNST's proposed reference site was selected in order to maintain predicted interference-

free service to Moncks Corner. In response to the unsubstantiated allegations contained in the Counterproposal, WNST then provided further technical support contradicting SB's assertions and demonstrating that although a portion of the site area may in fact be located in a tidal marsh (as would be expected in any coastal community), the area also includes a substantial section within which a suitable site can readily be located. See Technical Statement Supporting Reply Comments of Orville Ronald Brandon at 2-3 & Figure 1, attached hereto as Exhibit 1 and originally attached to Reply Comments of Orville Ronald Brandon as Exhibit 1.

Under existing Commission precedent, faced with contradictory technical studies regarding the feasibility of situating a Class C2 FM channel in the Kiawah Island area, the Allocations Branch should have waited to ascertain final site selection and determine site availability (and, as necessary, suitability) at the time that WNST files an application for a construction permit, not at the rule making stage. For example, in West Palm Beach, Florida, 6 FCC Rcd 6975 (Policy and Rules Division 1991), the Staff upheld the substitution of Channel 282C for Channel 282C1 at West Palm Beach, Florida because the opponent of the substitution failed to show that the petitioner would be unable to locate any site which would comply with the Commission's minimum distance and separation requirements and also meet FAA air hazard concerns, but rather had only shown that doing so may be difficult. The Report and Order in West Palm Beach noted that since the air-space consultants retained by the parties disagreed as to the availability of a site meeting FAA concerns, the FCC would follow its "usual practice" of deferring a determination as to the suitability of a transmitter site to the application stage where an actual site proposal is before the Commission." See also, Bradenton and High Point, Florida,



10 FCC Rcd 6551 (Policy and Rules Division 1995). In the case at hand, SB presented significantly less compelling evidence regarding the availability of a suitable site than did the opponent in West Palm Beach, and included no specific technical information. WNST, in contrast, presented engineering statements indicating that a suitable site would be available. Clearly, therefore, in this case, the Allocation Branch should follow its "usual practice" and make a determination as to the suitability of the proposed Kiawah Island site when WNST files an application for the site.

In an effort finally to put to rest any speculation regarding the likelihood of locating a suitable site in the acceptable site area, attached hereto is documentation indicating that LMC could indeed find an available site to operate on Channel 288C2 at Kiawah Island, South Carolina, that complies with the Commission's signal coverage and separation rules. In particular, included as Exhibit 2 are (1) a letter from WNST's airspace consultant concluding that the Federal Aviation Administration would issue a No Hazard to Air Navigation ruling allowing WNST to operate from an antenna tower 500 feet above ground level at a fully spaced site located at coordinates 32° 38' 57", 80° 02' 11" (NAD-27) and (2) a letter from the owner of the property located at these coordinates confirming that he would negotiate in good faith to lease this property to WNST for construction of such a 500 foot antenna tower. See Exhibit 2.

### **CONCLUSION**

For the reasons set forth above, L.M. Communications II of South Carolina, Inc. respectfully requests reconsideration of the decision to deny the petition for rulemaking (RM-8474) filed by Ceder Carolina and further requests substitution of Channel 288C2 for Channel 287C3, reallocation of Channel 288C2 from Moncks Corner to Kiawah Island, South Carolina and modification of Station WNST's license accordingly.

Respectfully submitted,

L.M. COMMUNICATIONS II  
OF SOUTH CAROLINA, INC.

By:



Steven A. Lerman

Sally A. Buckman

Linda D. Feldmann

Leventhal, Senter & Lerman

2000 K Street, N.W.

Suite 600

Washington, DC 20006-1809

202-429-8970

August 19, 1996

Its Attorneys

**CERTIFICATE OF SERVICE**

I, Karen M. Biscoe, do hereby certify that a true copy of the foregoing Petition for Reconsideration was mailed by first-class mail, postage prepaid, this 19th day of August 1996, to the following:

Mr. John A. Karousos\*  
Chief  
Allocations Branch  
Federal Communications Commission  
2000 M Street, N.W.  
Room 536  
Washington, DC 20036

Ms. Sharon P. McDonald\*  
Federal Communications Commission  
2025 M Street, N.W.  
Room 8316  
Washington, D.C. 20554

Gary S. Smithwick, Esq.  
Smith & Belendiuk, P.C.  
1990 M Street, N.W.  
Suite 510  
Washington, D.C. 20036

\* By Hand Delivery

  
Karen M. Biscoe

*du Treil, Lundin & Rackley, Inc.*

A Subsidiary of A. D. Ring, P.C.

TECHNICAL STATEMENT  
SUPPORTING REPLY COMMENTS OF  
ORVILLE RONALD BRANDON  
MM DOCKET 94-70

INTRODUCTION

These technical comments and attached exhibit have been prepared on behalf of Orville Ronald Brandon, Receiver (ORB), licensee of station WJYQ(FM) at Moncks Corner, South Carolina.<sup>1</sup> In the FCC's Notice of Proposed Rule Making (NPRM) in MM Docket 94-70, it is proposed to upgrade WJYQ to channel 288C2 (105.5 MHz) and change city of allotment from Moncks Corner, South Carolina to Kiawah Island, South Carolina. This response from ORB is in reply to comments filed in MM Docket 94-70.

ORB filed comments stating his continued interest in the proposed allotment of channel 288C2 to Kiawah Island. Information was provided concerning the number of available radio services in the proposed channel 288C2 gain area. Comments and a counterproposal were filed by another party.<sup>2</sup>

Sampit Broadcasters (SB) question the validity of ORB's proposed channel 288C2 reference site. SB alleges the channel 288C2 proposed reference site, because of its proximity to the Charleston Urbanized Area, makes

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<sup>1</sup> Orville Ronald Brandon is the successor-in-interest to Cedar Carolina Limited Partnership, the original petitioner in MM Docket 94-70.

<sup>2</sup> Sampit Broadcasters' counterproposal is the subject of a separate response submitted by ORB.

it a request for a Charleston station. SB further suggests a lower class for Kiawah Island instead of the ORB Class C2 proposal. Finally, SB claims the ORB proposal is a substandard allotment.

### DISCUSSION

As noted in the WJYQ Petition for Rule Making (PRM), the proposed channel 288C2 reference site was selected to place it close to Moncks Corner in order to maintain predicted 1 mV/m (60 dBu) service to Moncks Corner and minimize the potential loss area. The proposed channel 288C2 reference site was arbitrarily selected to achieve this purpose. This is somewhat similar to the FCC staff selecting a site restricted reference point in close proximity to the requested community.

Exhibit #1 attached to the original petition (Useable Area Map for Channel 288C2) shows a substantial area within which to locate a transmitter site for channel 288C2 in compliance with the FCC's minimum separation requirements. The area for channel 288C2 includes significant portions of James Island and Johns Island. Figure 1 attached shows a portion of the area to locate channel 288C2 on large scale 1/24,000 scale topographic maps. It is believed this map demonstrates a substantial area within which to locate a suitable site for channel

288C2.<sup>4</sup> The actual selection of a site, its availability, the ascertainment of reasonable assurance for use, and notification to the FAA is appropriate at the application stage, not the rule making stage.

SB alleges that since the assumed channel 288C2 reference point is located just within the Charleston Urbanized Area, the proposal is for a new Charleston FM station. The communities of allotment are what is pertinent, not the arbitrary locations of reference sites. As noted in the original petition, the present WJYQ city of allotment (Moncks Corner) and the proposed city of allotment (Kiawah Island) are both located outside the Charleston Urbanized Area. SB's comments concur with this.

Throughout its comments, SB contends that the ORB proposal for channel 288C2 is "substandard" and wasteful of FM spectrum. ORB has already provided population information for the proposed channel 288C2 allotment, which reports that channel 288C2 would provide predicted 1 mV/m service to 468,867 people, and a net gain in 1 mV/m service to 250,238 people when compared to the initial Class A allotment at Moncks Corner. Additionally, it is inevitable that any FM service at Kiawah Island will direct some proportion of the signal over water. What is

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<sup>4</sup> In addition to the area shown on the maps for channel 288C2, there are additional areas which will be available for consideration at application time in accordance with Section 73.215 of the FCC rules. Stations WDAR-FM on channel 288C3 at Darlington, South Carolina and WZNY on channel 289C at Augusta, Georgia are both authorized under Section 73.215. Station WDAR-FM represents the north site restriction for channel 288C2, and WZNY represents the west site restriction.

of significance, however, is the number of people served by the respective proposals. It then suggests a Class A operation on Channel 288 instead of ORB's proposal for a Class C2 operation. The estimated population (1990 Census) within the predicted 1 mV/m contour for a maximum facility operation on channel 288A (6 kW, 100 meters) at SB's proposed reference site is 147,413 people. When compared with ORB's channel 288C2 proposal (468,867 people) the SB proposal is markedly inferior.


*du Treil, Lundin & Rackley, Inc.*

A Subsidiary of A. D. Ring, P.C.

I, John A. Lundin, am Vice President of du Treil, Lundin & Rackley, Inc., a consulting communications engineering firm located at 240 North Washington Boulevard, Suite 700, Sarasota, Florida, 34236. I am a registered professional engineer in the District of Columbia (#7499) and the State of Florida (#46454). My qualifications as an engineer are matter of record with the Federal Communications Commission.

The attached technical report has been prepared for Orville Ronald Brandon (ORB). The calculations and exhibits contained in this report were made by me personally or under my direction. All facts contained therein are true of my own knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true.

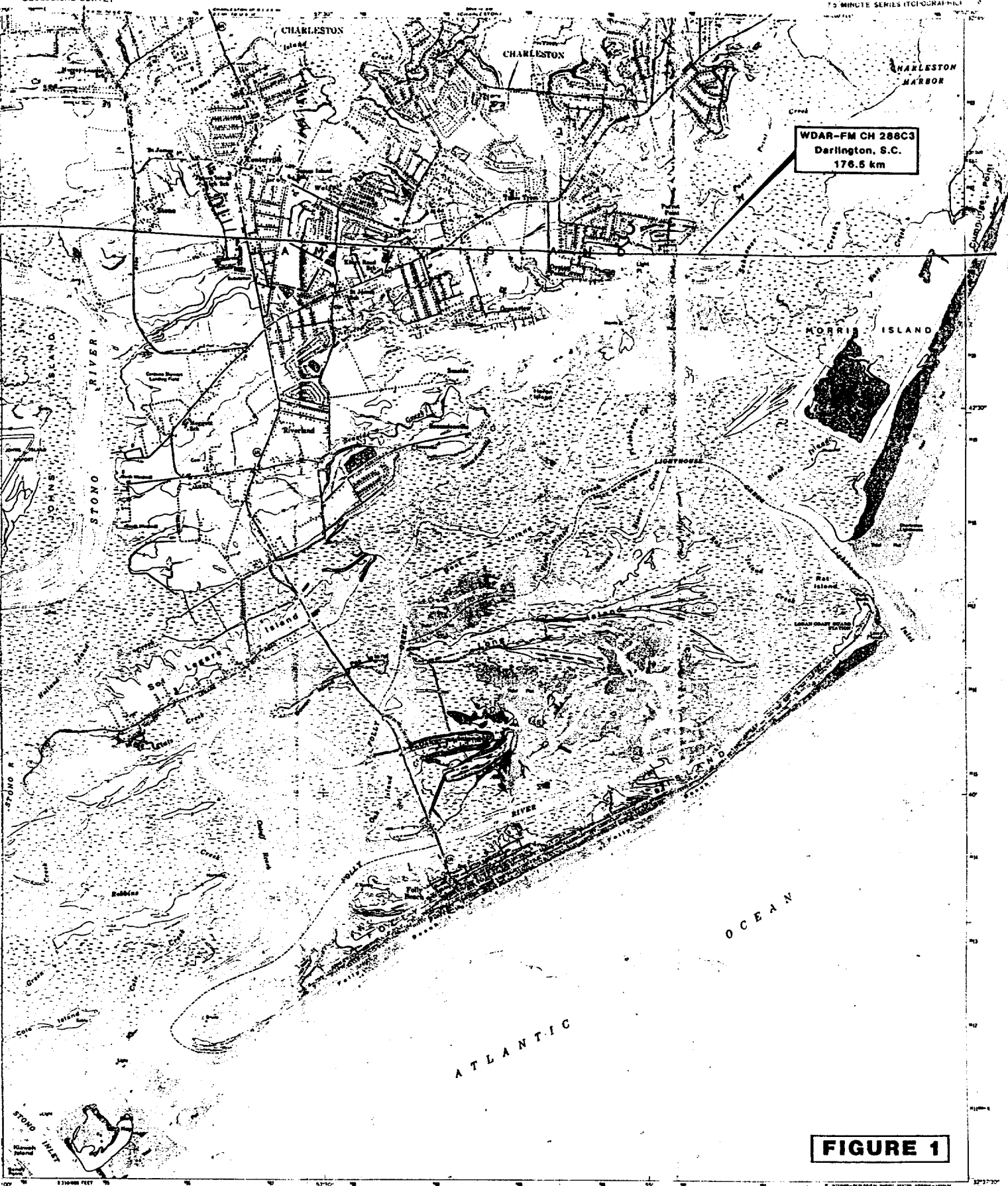
1

  
John A. Lundin

Registered Professional Engineer  
DC No. 7499  
FL No. 46454

September 9, 1994





**FIGURE 1**

Maped, edited, and published by the Geological Survey  
Control by USGS, USACE and USCE

Culture and drainage from controlled aerial photographs  
Aerial photographs taken 1957. Topography by altimetric surveys 1950  
Hydrography compiled from USACE charts 792 (1957), 491 (1958),  
and 1239 (1958)

Polynomial projection. 1927 North American datum.  
10,000 feet grid based on South Carolina coordinate system.  
Scale 1:24,000  
1000-meter Universal Transverse Mercator grid. Scales  
are 17, shown in blue  
There may be private inholdings within the boundaries  
of the National or State reservations shown on this map

UTM GRID AND 1927 NORTH AMERICAN DATUM  
SCALE 1:24,000 AT CENTER OF SHEET

SCALE 1:24,000

CONTOUR INTERVAL 5 FEET  
NATIONAL GEODETIC VERTICAL DATUM OF 1959  
DEPTH CURVES AND SOUNDINGS IN FEET—DATUM IS MEAN LOW WATER  
THE HEARTLINE BETWEEN THE TWO DATUMS IS VARIABLE  
SHORELINE SHOWS THE APPROPRIATE LINE OF MEAN HIGH WATER  
THE AVERAGE DEPTH OF 100 FEET IS INDICATED BY 5.0 FEET

THIS MAP COMPLETES WITH NATIONAL MAP ACCURACY STANDARDS  
FOR SALE BY U.S. GEOLOGICAL SURVEY, RESTON, VIRGINIA 22092  
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST

Boundary is shown in purple compiled from 1957  
topographic available from the controlling agency 71

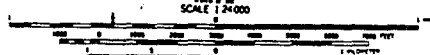
ROAD CLASSIFICATION  
Major Road  
Minor Road  
Unimproved Road  
Scale Route



JAMES ISLAND, S.C.  
N 32° 37' 5" W 79° 52' 5" E



Measured, edited, and published by the Geological Survey  
Control by USGS and USCGS  
Contours and drainage from detailed aerial photomosaic  
of photographs taken 1957. Topography by aneroid  
surveys 1958-1959  
Hydrography compiled from USCGS charts 752 and  
1274 (1959)  
Hydrographic control, 1957 North American Datum  
16,000 foot grid based on South Carolina coordinate system,  
south zone  
1000-meter Universal Transverse Mercator grid scale,  
zone 17, shown in blue  
To place on the projected North American Datum 1983,  
move the projection lines 16 meters south and  
19 meters west as shown by dashed corner ticks



CONTOUR INTERVAL 5 FEET  
NATIONAL GEODETIC METHOD, DATUM OF 1929  
DEPTH CURVES AND SOUNDINGS IN FEET-DATUM OF MEAN LOW WATER  
ENCLOSING ISLANDS TOPOGRAPHY IN FEET-DATUM OF MEAN LOW WATER  
THE MAP COMPLETES WITH NATIONAL MAP ACCURACY STANDARDS  
FOR SALE BY U.S. GEOLOGICAL SURVEY  
DENVER, COLORADO 80215, OR RESTON, VIRGINIA 22082  
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST



ROAD CLASSIFICATION  
Heavy duty ——— Light duty ———  
Unimproved dirt ———  
State Route ———  
LEOAREVILLE, S. C.  
32080-11-17 404  
1959  
PHOTOGRAPHED 1971  
DATE COPY 8 DEC-1978

Revisions shown in purple computed from aerial  
photographs taken 1971. This information on map  
and checked

# John P. Allen

*Airspace Consultant*

Telephone  
(904) 261-6523  
FAX (904) 277-3651

P.O. Box 1008  
Fernandina Beach, FL 32035-1008

August 19, 1996

Mr. Lynn Martin  
L M Communications  
P. O. Box 11788  
Lexington, KY 40578

Dear Lynn:

Pursuant to a conversation with your consulting engineer John Lundin, P.E., a preliminary aeronautical evaluation was conducted near Folly Beach, SC, for the purposes of reviewing a proposed antenna tower site for a proposed antenna tower 500 feet above ground level. The aeronautical evaluation was conducted in accordance with the standards for determining obstructions to the navigable airspace as set forth in Subpart C of Part 77 of the Federal Aviation Regulations.

COORDINATES: Latitude 32-38-57 North - Longitude 80-02-11 West  
(NORTH AMERICAN DATUM - 1927)

COORDINATES: Latitude 32-38-57.64 N - Longitude 80-02-10.33 W  
(NORTH AMERICAN DATUM - 1983)

HEIGHT:            5 feet AMSL            500 feet AGL            505 feet AMSL

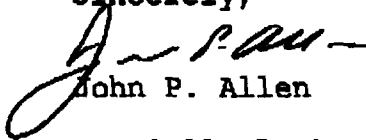
The evaluation disclosed that the proposed site was located 3.51 nautical miles from the Charleston Executive Airport reference point. The proposed site does exceed the standards of Part 77 (77.23(a)(2) by 233 feet - its height in excess of 272 feet AMSL within 3.51 nautical miles of the Charleston Executive Airport reference point). Notice to the FAA is required and the FAA will be required to circularize this proposal to the interested aeronautical community for their comments, prior to issuing a determination. The conclusion of the FAA's aeronautical study in my opinion will be a determination of No Hazard to Air Navigation.

The determination of no hazard is based upon the knowledge, that the proposed site does not impact any current or proposed instrument approach surfaces and that the proposed site is beyond known airport traffic pattern. The FAA's determination will require marking (aviation orange and aviation white) and lighting (red obstruction).

Mr. Lynn Martin  
August 19, 1996  
Page -2-

If there are any questions regarding the evaluation, please do not hesitate to call.

Sincerely,


A handwritten signature in dark ink, appearing to read "John P. Allen", with a stylized flourish at the end.

cc: Sally Buckman, Esq.  
John Lundin, P.E.

## EXHIBIT 2

In the event that LM Communications II receives approval of the application currently before the FCC regarding construction of a 500 foot tower, I would negotiate in good faith to lease land for this purpose.

Name: T. E. Pedersen  
Address: 3381 Legareville Road  
Johns Island SC 29455

Signature:   
Date: July 17, 1996

Approximate location of property: Geographic coordinates 32° 38' 57",  
80° 02' 11" (NAD-27)